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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

REGINALD OLIVER; JOSEPH BATIESTE, )  
JR.; ANTOINETTE MCCULLOUGH; )  
DELANDRO BROWN; DANNIE CARTER, )  
SR.; LAWRENCE GRAHAM; MESIAH )  
SHAW, individually and on behalf of those )  
persons similarly situated, )

Plaintiffs, )

vs. )

CITY OF OAKLAND; KARLA RUSH OR )  
DOE 1, individually and in her capacity as a )  
police officer for the City of Oakland; DOES )  
2-100, inclusive, )  
Defendants. )

CASE NO: C08-04914 TEH

**FIRST AMENDED COMPLAINT FOR  
DAMAGES, DECLARATORY AND  
INJUNCTIVE RELIEF  
(Violation of Civil Rights,  
42 U.S.C. Section 1983)**

**CIVIL RIGHTS CLASS ACTION**

**JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT

CASE NO. C08-04914 TEH

**JURISDICTION**

1. This action arises under 42 U.S.C. Sections 1983. Jurisdiction is based on 28 U.S.C. Sections 1331 and 1343.

**INTRADISTRICT ASSIGNMENT**

2. The claims alleged herein arose in the City of Oakland, State of California. Therefore, venue and assignment lies in the United States District Court for the Northern District of California, San Francisco or Oakland Divisions. 28 U.S.C. Section 1391(b)(2).

**PARTIES**

3. Plaintiff, REGINALD OLIVER, is an African American male.  
4. Plaintiff, JOSEPH BATIESTE, JR., is an African American male.  
5. Plaintiff, ANTOINETTE MCCULLOUGH, is an African American female.

6. Plaintiff, DELANDRO BROWN, is an African American male.  
7. Plaintiff, DANNIE CARTER, SR., is an African American male.  
8. Plaintiff, LAWRENCE GRAHAM, is an African American male.  
9. Plaintiff, MESIAH SHAW, is an African American male.  
10. Defendant CITY OF OAKLAND is, and at all times herein mentioned was, a municipal corporation duly organized and existing under the laws of the State of California.

11. Defendant KARLA RUSH (hereinafter Defendant RUSH) or DOE 1 was at all times herein mentioned, a Police Officer for Defendant CITY OF OAKLAND and is sued herein in her individual and official capacities.

**FIRST AMENDED COMPLAINT**

**CASE NO. C08-04914 TEH**

12. Plaintiff is ignorant of the true names and/or capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believe, and upon such information and belief allege that each of the Doe defendants is legally responsible and liable for the incident, injuries and damages hereinafter set forth, and that each of said defendants proximately caused said incidents, injuries and damages by reason of their negligence, breach of duty, negligent supervision, management or control, battery, violation of constitutional rights, violation of public policy, false arrests, or by reason of other personal, vicarious or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether based upon agency, employment, ownership, entrustment, custody, care or control or upon any other act or omission. Plaintiff will ask leave to amend this complaint to insert further charging allegations when such facts are ascertained.

13. In doing the acts alleged herein, defendants, and each of them, acted within the course and scope of their employment for the CITY OF OAKLAND.

14. In doing the acts and/or omissions alleged herein, defendants, and each of them, acted under color of authority and/or under color of law.

15. In doing the acts and/or omissions alleged herein, defendants, and each of them, acted as the agent, servant, employee and/or in concert with each of said other defendants herein.

### STATEMENT OF FACTS

16. Defendant CITY OF OAKLAND and high ranking CITY OF OAKLAND officials have long been on actual notice that members of the CITY OF OAKLAND Police

### FIRST AMENDED COMPLAINT

CASE NO. C08-04914 TEH

1 Department, particularly those assigned to narcotics and gang units, have repeatedly violated the  
2 constitutional rights of citizens by fabricating information in reports, providing false and/or  
3 intentionally misleading information in warrant affidavits to the Court and have otherwise caused  
4 numerous citizens to be subjected to searches, arrests, imprisonment and malicious prosecutions  
5 without probable cause.

6 17. Despite the fact that the City of Oakland agreed to a non-monetary  
7 settlement agreement in the case of *Delphine Allen, et al. v. City of Oakland*, USDC No. C-00-  
8 4599 TEH, otherwise known as “The Riders” litigation, which was intended to redress and  
9 prevent a recurrence of a pattern and practice of such abuses and constitutional violations by  
10 drug and gang officers in the Oakland Police Department, the CITY OF OAKLAND has  
11 repeatedly failed fully implement and enforce said settlement agreement, and worse, it now  
12 appears that numerous members of the defendant CITY OF OAKLAND’s Police Department  
13 have continued to engage in customs, policies, patterns and practices of fabricating information  
14 in reports, providing false and/or intentionally misleading information in warrant affidavits to the  
15 Court and have otherwise continued to cause numerous citizens to be subjected to searches,  
16 arrests, imprisonments and malicious prosecutions without probable cause.

17 18. In particular, plaintiffs are informed and believe and thereon allege that  
18 members of the CITY OF OAKLAND Police Department, including, but not limited to,  
19 defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, have individually  
20 and/or while acting in concert with one another, engaged in a repeated pattern and practice of  
21 providing false or misleading information in police reports, warrant affidavits, testimony and/or  
22 in other writings and/or verbal statements in order to cause the false arrest, false imprisonment

23 FIRST AMENDED COMPLAINT

24 CASE NO. C08-04914 TEH

1 and/or malicious prosecution of numerous individuals, including, but not limited to, the named  
2 plaintiffs, REGINALD OLIVER, JOSEPH BATIESTE, JR., ANTOINETTE MCCULLOUGH,  
3 DELANDRO BROWN, DANNIE CARTER, SR., LAWRENCE GRAHAM, MESIAH SHAW  
4 and the class members described below.

5 19. Plaintiffs are further informed and believe and thereon allege that said  
6 customs, policies, patterns and/or practices are the product of a culture of tolerance in the CITY  
7 OF OAKLAND Police Department in which the end result, i.e., an arrest and/or prosecution, by  
8 any means necessary (whether lawful or unlawful) has become more important than ensuring  
9 that the Constitution and legal processes are followed by members of the Oakland Police  
10 Department.

11 20. Plaintiffs are further informed and believe and thereon allege that as a  
12 matter of official policy -- rooted in an entrenched posture of deliberate indifference to the  
13 constitutional rights of primarily African American and other minority citizens who live, visit  
14 and/or travel within Oakland neighborhoods in particular -- defendant CITY OF OAKLAND has  
15 long allowed citizens, such as the plaintiffs and the class members herein, to be abused by its  
16 police officers, including by defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or by  
each of them, individually and/or while acting in concert with one another.

17 21. As a result of the pre-existing customs, policies, patterns and/or practices  
18 of such abuses by members of defendant CITY OF OAKLAND's Police Department, plaintiffs  
19 REGINALD OLIVER, JOSEPH BATIESTE, JR., ANTOINETTE MCCULLOUGH,  
20 DELANDRO BROWN, DANNIE CARTER, SR., LAWRENCE GRAHAM, MESIAH SHAW

21  
22 FIRST AMENDED COMPLAINT

23 CASE NO. C08-04914 TEH

1 and the class members described in this Complaint, were subjected to the violation of their  
2 constitutional rights as alleged herein.

3 **PLAINTIFF REGINALD OLIVER**

4 22. Specifically with respect to plaintiff REGINALD OLIVER, plaintiff is  
5 informed and believes and thereon alleges that defendant KARLA RUSH or DOE 1 and/or  
6 DOES 2-50 and/or each of them, individually and/or while acting in concert with one another as  
7 members of the CITY OF OAKLAND Police Department, caused a warrant to be issued by the  
8 Alameda Superior Court without probable cause, based on intentionally false and/or misleading  
9 statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of  
10 them.

11 23. Thereafter, plaintiff OLIVER was subjected to an unreasonable search and  
12 seizure on or about March 8, 2008, when members of the CITY OF OAKLAND Police  
13 Department used said warrant to enter a residence located at or about 619 Douglas Avenue in  
14 Oakland, California, where the plaintiff was located.

15 24. As a result of said unreasonable search and seizure, the plaintiff was  
16 arrested without reasonable or probable cause. The plaintiff was thereafter imprisoned in jail  
17 without reasonable or probable cause until he was able to post bail. The plaintiff was thereafter  
18 maliciously prosecuted on criminal charges in Alameda Superior Court as a direct result of the  
19 illegally obtained warrant.

20 25. Eventually, on or about October 6, 2008, plaintiff is informed and believes  
21 and thereon alleges that the malicious charges were dismissed after the Alameda County District  
22 Attorney's Office discovered that the warrant was obtained illegally by defendant KARLA

23 **FIRST AMENDED COMPLAINT**

24 **CASE NO. C08-04914 TEH**

1 RUSH or DOE 1 and/or by DOES 2-50, individually and/or while acting in concert with one  
2 another.

3 26. As a result of the aforementioned unreasonable search and seizure,  
4 Plaintiff OLIVER was unable to work and lost income in amounts to be determined according to  
5 proof.

6 27. As a result of the aforementioned unreasonable search and seizure,  
7 Plaintiff OLIVER, suffered damages for pain, suffering and emotional distress in amounts to be  
8 determined according to proof.

9 **PLAINTIFFS JOSEPH BATIESTE, JR. AND ANTOINETTE MCCULLOUGH**

10 28. Plaintiffs JOSEPH BATIESTE, JR. and ANTOINETTE MCCULLOUGH  
11 are informed and believe and thereon allege that defendant KARLA RUSH or DOE 1 and/or  
12 DOES 2-50 and/or each of them, individually and/or while acting in concert with one another as  
13 members of the CITY OF OAKLAND Police Department, caused a warrant to be issued by the  
14 Alameda Superior Court without probable cause, based on intentionally false and/or misleading  
15 statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of  
16 them.

17 29. Thereafter, Plaintiffs BATIESTE and/or MCCULLOUGH and/or each of  
18 them, was/were subjected to an unreasonable search and seizure on or about January 29, 2008,  
19 when members of the CITY OF OAKLAND Police Department used said warrant to enter a  
20 residence located at or about 6454 MacArthur Boulevard in Oakland, California, where the  
21 plaintiffs were located.

22 FIRST AMENDED COMPLAINT

23 CASE NO. C08-04914 TEH

1           30. As a result of said unreasonable search and seizure, said plaintiffs and/or  
2 each of them was/were arrested without reasonable or probable cause. Said plaintiffs and/or  
3 each of them, was/were thereafter imprisoned in jail without reasonable or probable cause until  
4 Plaintiff BATIESTE was able to post bail and Plaintiff MCCULLOUGH was released on her  
5 own recognizance. The plaintiffs and/or each of them, are informed and believe and thereon  
6 allege that they were thereafter maliciously prosecuted on criminal charges in Alameda Superior  
7 Court as a direct result of the illegally obtained warrant.

8           31. Eventually, on or about November 7, 2008, plaintiffs are informed and  
9 believe and thereon allege that the malicious charges were dismissed after the Alameda County  
10 District Attorney's Office discovered that the warrant was obtained illegally by defendant  
11 KARLA RUSH or DOE 1 and/or by DOES 2-50, individually and/or while acting in concert  
12 with one another.

13           32. At the time of said unreasonable search and seizure, Plaintiff  
14 MCCULLOUGH was subjected to unreasonable and excessive force when she was thrown to the  
15 floor of her home by a CITY OF OAKLAND Police Officer (Defendant DOE 2) and suffered  
16 emotional distress and embarrassment due to the fact that her body was not completely covered  
17 by her night clothing. Another CITY OF OAKLAND Police Officer (Defendant DOE 3)  
18 subjected Plaintiff MCCULLOUGH to excessive force when he put his knee into the Plaintiff's  
19 back while she was on the floor. Plaintiff MCCULLOUGH suffered additional pain, suffering  
20 and emotional distress due to the fact that the handcuffs were too tight around her wrists and  
21 interfered with the circulation in her hands and wrists.

22                               FIRST AMENDED COMPLAINT

23                               CASE NO. C08-04914 TEH



1                   33.     Due to his arrest and imprisonment without probable cause, Plaintiff  
2 BATIESTE was unable to work and lost income as a result thereof in amounts to be determined  
3 according to proof.

4                   34.     As a result of the unreasonable search and seizure at the home of Plaintiff  
5 MCCULLOUGH, personal property and/or monies belonging to the Plaintiffs was damaged,  
6 destroyed and/or was taken by members of the CITY OF OAKLAND Police Department  
7 involved in the search and seizure, including, but not limited to, Defendant KARLA RUSH or  
8 DOE 1, DOES 2-50 and/or each of them.

9                   35.     As a result of the unreasonable search and seizure stemming from the  
10 illegally obtained warrant, Plaintiff MCCULLOUGH's home was left in an unsecured state  
11 following her arrest and personal property belonging to the Plaintiff was stolen from her  
12 residence, including, but not limited to, irreplaceable photographs and mementos of Plaintiff  
MCCULLOUGH's deceased husband.

13                  36.     As a further result of the unreasonable search and seizure caused by the  
14 illegally obtained warrant, Plaintiff MCCULLOUGH was forced to move from her residence and  
15 incurred special damages as a result of having to move from her home.

16                  37.     Due to the fact that the police took \$217.00 from Plaintiff BATIESTE at  
17 the time of this arrest, he was unable to pay the rental charge on a storage unit where he  
18 maintained his tools and equipment for his employment and as a result, said tools were taken  
19 and/or disposed of by the storage company, resulting in damages to Plaintiff BATIESTE for the  
20 loss of the tools in an amount to be determined according to proof.

21  
22                               FIRST AMENDED COMPLAINT

23                               CASE NO. C08-04914 TEH

1           38. As a result of the aforementioned unreasonable search and seizure,  
2 Plaintiffs BATIESTE and/or MCCULLOUGH and/or each of them, suffered damages for pain,  
3 suffering and emotional distress in amounts to be determined according to proof.

4                           **PLAINTIFF DELANDRO BROWN**

5           39. Plaintiff DELANDRO BROWN is informed and believes and thereon  
6 alleges that defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them,  
7 individually and/or while acting in concert with one another as members of the CITY OF  
8 OAKLAND Police Department, caused a warrant to be issued by the Alameda Superior Court  
9 without probable cause, based on intentionally false and/or misleading statements made in bad  
10 faith by defendant RUSH or DOE 1 and/or DOES 4-50 and/or each of them.

11           40. As a result of said illegal warrant, Plaintiff DELANDRO BROWN is  
12 informed and believes and thereon alleges that on or about July 10, 2008, he was arrested  
13 without reasonable or probable cause when a car in which he was a passenger was stopped by  
14 members of the CITY OF OAKLAND Police Department (Defendants DOES 4-50 and/or each  
of them).

15           41. Despite the fact that there was no reasonable or probable cause to arrest  
16 Plaintiff DELANDRO BROWN, Plaintiff was handcuffed and imprisoned in jail without  
17 reasonable or probable cause until he was able to post \$5,000.00 in bail.

18           42. Thereafter, Plaintiff DELANDRO BROWN is informed and believes and  
19 thereon alleges that no criminal charges were filed against him as a result of this incident. As a  
20 result, on or about September 2, 2008, Plaintiff BROWN obtained an Order from the Alameda  
21 Superior Court sealing and destroying his record of arrest as a result of this incident.

22                           **FIRST AMENDED COMPLAINT**

23                           **CASE NO. C08-04914 TEH**

1           43.     As a result of the unreasonable search and seizure, Plaintiff DELANDRO  
2 BROWN incurred damages for pain, suffering and emotional distress in amounts to be  
3 determined according to proof.

4           44.     Following this incident, Plaintiff DELANDRO BROWN filed an Internal  
5 Affairs Complaint with Defendant CITY OF OAKLAND Police Department. Plaintiff is  
6 informed and believes and thereon alleges that Defendant CITY OF OAKLAND has failed to  
7 take any or appropriate remedial action as a result of this incident and/or otherwise ratified,  
8 approved and/or encouraged the unreasonable searches and/or seizures by Defendants KARLA  
9 RUSH or DOE 1, DOES 4-50 and/or each of them.

10                           **DANNIE CARTER, SR.**

11           45.     Plaintiff DANNIE CARTER, SR. is informed and believes and thereon  
12 alleges that defendant KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them,  
13 individually and/or while acting in concert with one another as members of the CITY OF  
14 OAKLAND Police Department, caused a warrant to be issued by the Alameda Superior Court  
15 without probable cause, based on intentionally false and/or misleading statements made in bad  
16 faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of them.

17           46.     Plaintiff DANNIE CARTER, SR. is informed and believes and thereon  
18 alleges that said illegally obtained warrant was issued for Apartment 6 of 1055 72<sup>nd</sup> Avenue in  
19 Oakland, California based on the sworn affidavit of Defendant KARLA RUSH or DOE 1 that  
20 this unit was the location of alleged illegal narcotics trafficking that she claimed to have  
21 personally witnessed.

22                           **FIRST AMENDED COMPLAINT**

23                           **CASE NO. C08-04914 TEH**

1           47.     Nevertheless, Plaintiff DANNIE CARTER, SR. is informed and believes  
2 and thereon alleges that Defendant KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of  
3 them, intentionally entered the home of Plaintiff CARTER, SR., which was located at *Apartment*  
4 8 of 1055 72<sup>nd</sup> Avenue in Oakland, California, on or about July 16, 2008 without a validly issued  
5 warrant, instead of *Apartment 6 - the unit for which the warrant was issued.*

6           48.     As a result of the unreasonable search and seizure caused by Defendant  
7 KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them, Plaintiff DANNIE CARTER,  
8 SR. was arrested without reasonable or probable cause.

9           49.     As a result of the unreasonable search and seizure caused by Defendant  
10 KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them, personal property of the  
11 Plaintiff was damaged, destroyed and/or seized by KARLA RUSH or DOE 1 and/or DOES 4-50  
12 and/or each of them, during the course of the search.

13           50.     Following his arrest, Plaintiff DANNIE CARTER, SR. was imprisoned  
14 without reasonable or probable cause from approximately July 16, 2008, until approximately  
15 October 17, 2008. In addition, Plaintiff DANNIE CARTER, SR. is informed and believes and  
16 thereon alleges that he was maliciously prosecuted on charges stemming from the illegally  
obtained warrant.

17           51.     Thereafter, Plaintiff DANNIE CARTER, SR. is informed and believes and  
18 thereon alleges that the criminal charges were eventually dismissed and he was not convicted of  
19 having committed any crime as a result of this incident.

20           52.     As a result of the unreasonable search and seizure caused by Defendant  
21 KARLA RUSH or DOE 1 and/or DOES 4-50 and/or each of them, Plaintiff DANNIE CARTER,

22                               FIRST AMENDED COMPLAINT

23                               CASE NO. C08-04914 TEH

1 SR. became homeless when he was evicted from his home while he was in jail and all of his  
2 personal property that was in his home at the time of his arrest was take and/or otherwise  
3 disposed of by his landlord. As a result of the loss of his home and personal property, Plaintiff  
4 DANNIE CARTER, SR. incurred general and special damages in amounts to be determined  
5 according to proof.

6 53. As a result of said unreasonable search and seizure, Plaintiff DANNIE  
7 CARTER, SR. suffered damages, including, but not limited to, pain, suffering and emotional  
8 distress in amounts to be determined according to proof.

9 **PLAINTIFFS LAWRENCE GRAHAM AND MESIAH SHAW**

10 54. Plaintiffs LAWRENCE GRAHAM and/or MESIAH SHAW and/or each  
11 of them, are informed and believe and thereon allege that defendant KARLA RUSH or DOE 1  
12 and/or DOES 4-50 and/or each of them, individually and/or while acting in concert with one  
13 another as members of the CITY OF OAKLAND Police Department, caused a warrant to be  
14 issued by the Alameda Superior Court without probable cause, based on intentionally false  
15 and/or misleading statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 4-

16 55. Thereafter, Plaintiffs LAWRENCE GRAHAM and/or MESIAH SHAW  
17 and/or each of them was/were subjected to an unreasonable search and seizure on or about  
18 January 25, 2008, when members of the CITY OF OAKLAND Police Department used said  
19 warrant to enter a residence located at or about 1075 70<sup>th</sup> Avenue in Oakland, California, where  
20 the plaintiffs were located.

21  
22 **FIRST AMENDED COMPLAINT**

23 **CASE NO. C08-04914 TEH**

1           56. As a result of said unreasonable search and seizure, the plaintiffs were  
2 handcuffed and detained without reasonable or probable cause during the search of the premises.  
3 Thereafter, plaintiff MESIAH SHAW was arrested and imprisoned in jail as a result of the  
4 aforesaid illegal warrant. Eventually, Plaintiff MESIAH SHAW was released from jail and was  
5 never convicted of any criminal charges as result of this incident.

6           57. Subsequently, Plaintiffs are informed and believe and thereon allege that  
7 Defendant KARLA RUSH or DOE 1 and/or DOES 4-50 issued a letter to the owner of 1075 70<sup>th</sup>  
8 Avenue, Oakland, California, on or about April 15, 2008, threatening to impose fines and  
9 penalties against her by falsely alleging that the Plaintiffs and/or each of them, were using the  
10 premises for drug trafficking, even though no evidence of illegal drugs was found at the premises  
11 during the course of the January 25, 2008 unreasonable search and seizure. As a result thereof,  
12 Plaintiff LAWRENCE GRAHAM was forced to move out of the premises and suffered general  
and special damages as a result thereof.

13           58. As a result of the aforementioned unreasonable search and seizure,  
14 Plaintiffs and/or each of them, suffered damages for pain, suffering and emotional distress in  
15 amounts to be determined according to proof.

16           **AS TO ALL NAMED PLAINTIFFS AND THE CLASS**

17           59. Plaintiffs are further informed and believe and thereon allege that  
18 Plaintiffs, and all persons similarly situated, suffered the violation of their constitutional rights as  
19 a result of customs, policies, patterns and/or practices of Defendant CITY OF OAKLAND,  
20 DOES 51-100, and each of them, including, but not limited to, deliberate indifference in the  
21 hiring, supervision, training, and discipline of members of the Oakland Police Department,

22           **FIRST AMENDED COMPLAINT**

23           **CASE NO. C08-04914 TEH**

1 including, but not limited to, defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or  
2 each of them.

3           60. Plaintiffs are further informed and believe and thereon allege that they,  
4 and all persons similarly situated to them, suffered the violation of their constitutional rights as  
5 alleged herein as a result of customs, policies and/or practices of defendants CITY OF  
6 OAKLAND, DOES 51-100, and/or each of them, including customs, policies and/or practices of  
7 failing to fully and/or fairly investigate complaints of misconduct against its police officers; of  
8 failing to appropriately monitor or otherwise track complaints of misconduct against its police  
9 officers so that appropriate and timely disciplinary action and/or training could be taken when  
10 officer(s) were shown to have a history of complaints; and/or of failing to promptly remove or  
11 terminate officers who repeatedly violated the rights of citizens and/or engaged in the type of  
12 misconduct alleged herein.

13           61. Plaintiffs are informed and believe and thereon allege that the  
14 aforementioned incidents were caused by the deliberate indifference of the CITY OF  
15 OAKLAND, Defendants 51-100, and/or other high ranking Police Department officials and/or  
16 supervisors, with regard to the need for more or different training and/or supervision and/or  
17 discipline of its police officers, including, but not limited to, defendants KARLA RUSH or DOE  
18 1 and/or DOES 2-50 and/or each of them.

19           62. Plaintiffs are further informed and believe and thereon allege that they,  
20 and all persons similarly situated, suffered the violation of their constitutional rights as a result of  
21 customs, policies, or practices of defendants CITY OF OAKLAND, DOES 51-100, and/or each  
22 of them, individually and/or acting in concert with one another, including, but not limited to,

23                           FIRST AMENDED COMPLAINT

24                           CASE NO. C08-04914 TEH

1 customs, policies or practices which encouraged, authorized or condoned false arrests,  
2 fabrication of evidence, falsification of police reports, false and/or misleading warrant affidavits  
3 and/or other misconduct which foreseeably would result in the violation of the rights of citizens.

4           63. Plaintiffs are further informed and believe and thereon allege that they,  
5 and all persons similarly situated, suffered the violation of their constitutional rights as a result of  
6 customs, policies or practices of defendants CITY OF OAKLAND, DOES 51-100, individually  
7 and/or acting in concert with one another, including, but not limited to, a custom, policy or  
8 practice of failing to stop or prevent ongoing acts of misconduct by certain members of its police  
9 department, including, but not limited to, defendant KARLA RUSH or DOE 1, DOES 2-50  
10 and/or each of them.

11           64. Plaintiffs are further informed and believe and thereon allege that they,  
12 and all persons similarly situated, suffered the violation of their constitutional rights as a result of  
13 customs, policies or practices of defendants CITY OF OAKLAND, DOES 51-100, individually  
14 and/or acting in concert with one another, including, but not limited to, a custom, policy or  
15 practice of failing to uphold and enforce remedies that defendants already agreed to adopt to  
16 prevent such ongoing abuses by members of the CITY OF OAKLAND Police Department in the  
*Delphine Allen v. City of Oakland (The Riders) Litigation.*

17           65. Plaintiffs are further informed and believe and thereon allege that high  
18 ranking CITY OF OAKLAND officials, including, but not limited to defendants DOES 51-100,  
19 and/or other high ranking police department officials and/or supervisors, knew and/or reasonably  
20 should have known of the custom, policies, patterns and/or practices of misconduct by the  
21 individual police officer Defendants herein, KARLA RUSH or DOE 1 and/or DOES 2-100

22                           FIRST AMENDED COMPLAINT

23                           CASE NO. C08-04914 TEH



1 and/or by each of them, and failed to take any or appropriate remedial action prior to the subject  
2 incident.

3           66. Plaintiffs are further informed and believe and thereon allege that  
4 defendants DOES 51-100, and/or each of them, tacitly or directly ratified, approved, condoned  
5 and/or otherwise encouraged a pattern, practice, custom or policy of misconduct and/or civil  
6 rights violations by defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them.

7                           **CLASS ACTION ALLEGATIONS**

8           67. Plaintiffs seek class certification pursuant to Fed.R.Civ.P. 23(a) and (b)(2)  
9 to allege claims for damages, injunctive and declaratory relief on behalf of himself and all  
10 persons similarly situated. The proposed class consists of all persons who were subjected to  
11 searches, seizures, arrests, imprisonments and/or malicious prosecutions based on false and/or  
12 misleading information contained in CITY OF OAKLAND police reports, warrant affidavits  
13 and/or other testimony and/or writings used to obtain search and/or arrest warrants from  
14 California Courts by members of the CITY OF OAKLAND Police Department since the  
adoption of the non-monetary settlement agreement in *Delphine Allen v. City of Oakland*.

15           68. This case satisfies the prerequisites of a Rule 23(b)(2) class action.

16           69. The class is so numerous that joinder of all members is impracticable.  
17 Plaintiffs do not know the identities or exact number of all class members. Based on newspaper  
18 accounts, it appears that at least 12 members of the City of Oakland Police Department were  
19 pulled from street duty by the Oakland Police Department in connection with this latest scandal  
20 and the Alameda County District Attorney's Office has not yet determined the exact number of  
21 cases it intends to move to dismiss as a result of the false and/or misleading information given by

22                           **FIRST AMENDED COMPLAINT**

23                           **CASE NO. C08-04914 TEH**

1 Oakland Police Department officers to the Court in procuring warrants. Therefore, the size of  
2 the class is likely to be large given the number of officers involved.

3 70. There are questions of law and fact common to all members of the class,  
4 because all class members have been adversely affected by the challenged actions of the  
5 defendants. Common questions of law and fact include, but are not limited to: whether defendant  
6 KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them engaged in a custom, policy,  
7 pattern and/or practice of fabricating police reports, making false and/or misleading statements in  
8 procuring warrants from the Courts and/or otherwise causing the plaintiff and class members to  
9 be subjected to unreasonable searches and seizures, false arrests, false imprisonments and/or  
10 malicious prosecutions; whether the defendants' conduct was motivated by racial animus or bias,  
11 whether defendant CITY OF OAKLAND maintained customs, policies, patterns and practices  
12 which caused and/or contributed to the violation of the plaintiffs' rights; and whether the CITY  
13 OF OAKLAND, its police department and/or city officials and/or supervisors failed to properly  
14 train and supervise members of the CITY OF OAKLAND Police Department which caused  
and/or contributed to the violation of the plaintiffs' rights.

15 71. The claims of the named plaintiffs are typical of the claims of the class.  
16 The claims of the class members arise from the same type of conduct, customs, policies or  
17 practices that have resulted in damages to the class representatives and are based on the same  
18 legal theories.

19 72. The representative plaintiffs will fairly and adequately protect the interests  
20 of the class because they are, and were, subject to the policies, customs, patterns and practices  
21 complained of herein, and have no interests antagonistic to other members of the class. In

22 FIRST AMENDED COMPLAINT

23 CASE NO. C08-04914 TEH

1 addition, plaintiffs' counsel are experienced in litigating federal civil rights cases and class  
2 actions, including federal civil rights actions against the CITY OF OAKLAND and the CITY OF  
3 OAKLAND Police Department.

4 73. The defendants have acted and/or have failed to act on grounds generally  
5 applicable to the class, and an award of damages, injunctive and declaratory relief for the class as  
6 a whole is appropriate.

7 74. The prosecution of separate actions by individual members of the class  
8 would create a risk of inconsistent or incompatible standards of conduct for the defendants,  
9 thereby making a class action the superior method of adjudicating the controversy.

#### 10 **STATEMENT OF DAMAGES AND RELIEF SOUGHT**

11 75. As a result of the acts and/or omissions of defendants as alleged in this  
12 Complaint, plaintiffs, and those persons similarly situated, and each of them, suffered damages  
13 and/or injuries, including, but not limited to, pain, suffering and emotional distress, in amounts to  
14 be determined according to proof.

15 76. As a result of the acts and/or omissions of defendants as alleged in this  
16 Complaint, plaintiffs, and those persons similarly situated, and each of them, suffered special  
17 damages or may suffer special damages in the future, including, but not limited to, lost wages,  
18 criminal defense attorneys' fees and costs, bail bond expenses, loss of their home(s), relocation  
19 expenses, damage or loss of personal property and/or other out of pocket losses to be determined  
20 according to proof.

21  
22 **FIRST AMENDED COMPLAINT**

23 **CASE NO. C08-04914 TEH**

1           77. Plaintiffs and the class members will also be entitled to recover their  
2 reasonable attorneys' fees and costs in addition to their general and compensatory damages  
3 pursuant to statute.

4           78. The conduct of defendant KARLA RUSH or DOE 1 and/or DOES 2-100  
5 and/or each of them, was intentional, oppressive, malicious, fraudulent and/or done with a  
6 conscious and/or reckless disregard for the rights of the plaintiffs. Therefore, plaintiffs and the  
7 class members will be entitled to recover punitive damages in amounts to be determined  
8 according to proof.

9           79. Defendants' policies, practices, customs, conduct and acts alleged herein  
10 have resulted and will continue to result in irreparable injury to plaintiffs and the class members,  
11 including but not limited to violations of their constitutional and statutory rights. Plaintiffs and  
12 class members have no plain, adequate or complete remedy at law to address the wrongs  
13 described herein. The plaintiffs and class members intend in the future to exercise their  
14 constitutional rights in the vicinity of the City of Oakland and in other public places in the City  
15 of Oakland. Defendants' conduct described herein has created fear, anxiety and uncertainty  
16 among plaintiffs with respect to their ability to exercise their constitutional rights in the present  
17 and future, and with respect to their liberty, privacy, physical security and safety. Defendants'  
18 conduct described herein has also created fear, anxiety and uncertainty among plaintiffs and class  
19 members with respect to their exercise of their right to move freely about the public streets, in  
20 their own homes and/or in the homes of friends and/or relatives without being subjected to  
21 unreasonable searches and seizures and/or discriminatory and disparate treatment due to their  
22 ethnicity and/or race.

23                               FIRST AMENDED COMPLAINT

24                               CASE NO. C08-04914 TEH

1           80.     Plaintiffs and the class therefore seek injunctive relief from this court, to  
2 ensure that plaintiffs and persons similarly situated will not suffer violations of their rights from  
3 defendants' illegal and unconstitutional policies, customs and practices as described herein.

4           81.     An actual controversy exists between plaintiffs, the class members and  
5 defendants in that plaintiffs and the class contends that the policies, practices and conduct of  
6 defendants alleged herein are unlawful and unconstitutional, whereas plaintiffs and the class  
7 members are informed and believe that defendants contend that said policies, practices and  
8 conduct are lawful and constitutional. Plaintiffs seek a declaration of rights with respect to this  
9 controversy.

10                   **CLAIMS FOR RELIEF**

11                   **FIRST CLAIM FOR RELIEF**

12                   **(42 U.S.C. SECTION 1983)**

13                   **(AGAINST DEFENDANTS KARLA RUSH, DOES 1-50)**

14           82.     Plaintiffs incorporate by reference and re-allege herein Paragraphs 1  
15 through 81.

16           83.     In doing the acts complained of herein, defendants KARLA RUSH or  
17 DOE 1 and/or DOES 2-50 and/or each of them, did act under color of state law to deprive  
18 plaintiffs, the class members and/or each of them as alleged heretofore of certain constitutionally  
19 protected rights, including, but not limited to:

- 20                   (a) the right to be free from unreasonable searches or seizures;  
21                   (b) the right to equal protection of the law; and/or  
22                   (c) the right not to be deprived of liberty without due process of law.

23                   **FIRST AMENDED COMPLAINT**

24                   **CASE NO. C08-04914 TEH**

1           84. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
2 Amendments to the United States Constitution.

3           85. As a result of the violation of their constitutional rights by defendants  
4 KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, plaintiffs, the class members  
5 and/or each of them sustained the injuries and/or damages as alleged heretofore in this  
6 Complaint.

7           WHEREFORE, Plaintiffs and the class members pray for relief as hereinafter set forth.

8                           **SECOND CLAIM FOR RELIEF**

9                           **(42 U.S.C. SECTION 1983)**

10                   **(AGAINST DEFENDANTS CITY OF OAKLAND, DOES 51-100)**

11           86. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1  
12 through 85.

13           87. As against Defendants CITY OF OAKLAND and/or DOES 51-100 and/or  
14 each of them, individually and/or in their capacities as official policy-maker(s) for the CITY OF  
15 OAKLAND, the plaintiffs and class members further allege that the acts and/or omissions  
16 alleged in the Complaint herein are indicative and representative of a repeated course of conduct  
17 by members of defendant CITY OF OAKLAND Police Department tantamount to a custom,  
18 policy or repeated practice of condoning and tacitly encouraging the abuse of police authority,  
19 and disregard for the constitutional rights of citizens, such as plaintiffs.

20           88. Plaintiffs and class members are further informed and believe and thereon  
21 allege that the acts and/or omissions alleged herein are the proximate result of a custom, policy,  
22 pattern or practice of deliberate indifference by defendant CITY OF OAKLAND, DOES 51-100

23                           **FIRST AMENDED COMPLAINT**

24                           **CASE NO. C08-04914 TEH**

1 and/or each of them, to the repeated violations of the constitutional rights of citizens by CITY  
2 OF OAKLAND police officers, which have included, but are not limited to, repeated acts of  
3 making false reports, providing false and/or misleading information in the procurement of  
4 warrants, causing arrests, imprisonments and/or malicious prosecutions based on fabricated  
5 and/or misleading statements and/or engaging in similar acts of misconduct on a repeated basis.

6 89. Plaintiffs and class members are further informed and believe and thereon  
7 allege that the damages sustained as alleged herein were the proximate result customs, policies  
8 and/or practices which included, but were not limited to, the failure to adequately or  
9 appropriately hold officers accountable for their misconduct, the failure to properly and fairly  
10 investigate complaints about officers' misconduct, the failure to enact or adopt policies to ensure  
11 adequate and/or appropriate oversight of officers to prevent continuing violations of the rights of  
12 citizens, the failure to fully implement and enforce the non-monetary settlement agreement in the  
13 *Delphine Allen v. City of Oakland (the Riders) Litigation* which was intended to redress the same  
14 or similar unconstitutional conduct that occurred in the instant case, the failure to properly train  
15 and/or discipline officers, the failure to adequately or properly supervise officers, the failure to  
16 adopt and fully implement an appropriate early warning system, policies and customs which  
17 encouraged officers to target certain groups of citizens for unreasonable search and seizure  
18 and/or other customs, and/or policies which caused and/or contributed to, the violation of the  
19 rights of citizens by members of the CITY OF OAKLAND Police Department.

20 90. The aforementioned deliberate indifference, customs, policies or practices  
21 of defendants CITY OF OAKLAND, DOES 51-100, and/or each of them, resulted in the

22 FIRST AMENDED COMPLAINT

23 CASE NO. C08-04914 TEH

1 deprivation of the constitutional rights of the plaintiffs and class members, including, but not  
2 limited to, the following:

3 (a) the right not to be deprived of liberty or property without Due Process of Law;

4 (b) the right to be free from unreasonable searches and/or seizures; and/or,

5 (c) the right to equal protection of the law.

6 91. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
7 Amendments to the United States Constitution.

8 92. As a result of the violation of their constitutional rights by defendants  
9 CITY OF OAKLAND and/or DOES 51-100 and/or each of them, plaintiffs and the class  
10 members and/or each of them, sustained the injuries and/or damages as alleged heretofore in this  
11 Complaint.

12 WHEREFORE, plaintiffs and class members pray for relief as hereinafter set  
13 forth.

14 **JURY TRIAL DEMAND**

15 93. Plaintiffs and class members hereby demand a jury trial.

16 **PRAYER**

17 WHEREFORE, Plaintiffs and class members pray for judgment against defendants, and  
18 each of them, as follows:

19 1. For an order certifying the class defined herein pursuant to Fed.R.Civ.P. 23(a) and  
20 (b)(2);

21 2. For preliminary and permanent injunctive relief restraining defendants from engaging  
22 in the unlawful and unconstitutional actions complained of above;

23 **FIRST AMENDED COMPLAINT**

24 **CASE NO. C08-04914 TEH**



3. For a declaratory judgment that defendants' conduct complained of herein was a violation of plaintiffs' rights under the Constitution and laws of the United States and California;

4. For the individual named plaintiffs, general, special and compensatory damages to be determined according to proof;

5. For punitive and exemplary damages in amounts to be determined according to proof as to the individual defendants;

6. For attorneys' fees pursuant to 42 U.S.C. § 1988 and/or other authorities in amounts to be determined according to proof;

7. For costs of suit;

8. For pre- and post-judgment interest as permitted by law;

9. For such other and further relief as the Court may deem just and proper.

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: November 10, 2008

\_\_\_\_\_/S/\_\_\_\_\_  
JOHN L. BURRIS  
Attorney for Plaintiffs

Dated: November 10, 2008

\_\_\_\_\_/S/\_\_\_\_\_  
JAMES B. CHANIN  
Attorney for Plaintiffs

FIRST AMENDED COMPLAINT

CASE NO. C08-04914 TEH